Awarding inspiration

A conversation with Nico Krisch on the occasion of the awarding ceremony of the Max-Planck-Cambridge Prize of International Law

Angelo Golia 2020-01-22T09:00:38

In 2018 the Max Planck Society established the Max Planck-Cambridge Prize for International Law (MaxCamPIL), a research prize awarded jointly by the Max Planck Institute for Comparative Public Law and International Law (MPIL) and the Lauterpacht Centre for International Law (LCIL) at the University of Cambridge. The MaxCamPIL aims at highlighting the relevance of fundamental research in the field of international law in a phase of reconfiguration of the global order. Its goal is to identify an outstanding mid-career legal scholar whose contributions to the study of international law have enriched the field and are likely to continue and develop further. It is also intended to highlight her/his scholarship, support her/his future work, and to provide a model of academic excellence, especially for younger scholars. In the first edition the Prize Committee, chaired by Professors Anne Peters and Eyal Benvenisti and made up of three postdoctoral researchers from each awarding institution, conferred the Prize to Professor Nico Krisch, following the application of criteria of excellence. The Committee was impressed by the originality, rigour and broad range of his research, including original and field-defining contributions to the study of structural issues of international law, authority in global administrative law and questions of constitutional theory. Professor Krisch has made significant theoretical contributions to our understanding of governance beyond the state. It is therefore with great pleasure that the Völkerrechtsblog publishes the interview with Nico Krisch given on the occasion of the awarding ceremony, which took place on 15 November 2019 in Heidelberg.

You have already won many prizes in your career. How do you feel about this specific prize? The genetic code of this prize is slightly different, as it is made for mid-career-scholars and the members of the selecting committee were mainly young scholars. In a way, this prize is also meant to point out to an example to younger scholars. So, I would like to know what is your opinion and how do you feel about that?

Of course, with time as you grow more senior, it is clear that your responsibilities include trying to raise and tutor and mentor younger scholars. I am very lucky that I have been at institutions where I have been able to focus to quite some extent on this development. One example is the Graduate Institute [of Geneva], which is a graduate institution where we have master and doctoral students and can spend quite a lot of time really working with them to get them to a different level during the time that they spend with us. That is not possible at all institutions, where sometimes you have a greater number of students and you can’t have as much personal

relationship with as we would be able there. Trying to help younger scholars develop also extends to other domains: reviewing, engagement in societies, trying to change the scope of opportunities, for example, something we tried with the European Societies of International Law which is meant to be more open and encouraging for younger scholars than previous academic structures had been. I think there are quite a few more senior scholars that take very seriously their responsibility to help and nurture junior scholars. Of course, this may not apply to everybody but as you grow more senior you get involved in all kinds of administrative tasks, so it's not always easy to find the time to perform this role, but I am trying at least.

You worked on many different topics but you always managed to convey your message towards different audiences. You are one of the very few scholars that are equally established in the Anglo-Saxon legal scholarship and in the continental legal scholarship. The languages, the styles of argumentation and also the scholarly attitudes are very different. So my question is, how do you manage to do that?

Maybe it is helpful to begin with an anecdote. My academic upbringing was in Germany, and precisely here in Heidelberg – at the university and then later at the Max Planck Institute. This shaped me in a certain way, a continental way of legal thinking, and I wrote my doctoral thesis in that style. And then I had the good fortune to spend some time at New York University as a postdoc, which came a bit as a shock. I had thought I had done something really meaningful with my thesis, and I realized soon after I had arrived there that people were not that interested in what I had been doing. They thought it was a bit of a pointless exercise to think of potential limits of Security Council powers and the right to self-defense of states. That is the matter of politics anyway, so what can you really say about it legally? Why would you spend three years or more of your time trying to work out an answer to that question? This was rather frustrating and I tried to understand what was so different, which brought me to a phase of soul-searching and an attempt to figure out what is so different about these academic cultures and getting a sense of what animates scholars in the US. It also came with an extension of my own academic horizon, as a result. Trying to come to terms with the difference really helped me to understand what are the questions that animate them, what are the styles that they work in, what are the fundamental understandings that they start from, and they were rather different. This was in a sense liberating because it allowed me to pursue other questions than I had thought possible before. US legal scholars have a much wider conception of what law is, they have a much greater readiness to include questions of politics and power into the analysis and that gave me the possibility to play in a sense with more instruments, and I realized that if you have the ability and you are versed in different styles, it can help both worlds, both cultures, it can connect them. t This was not really an easy realization initially, but I think it helped me very much later on.

I have two more questions about the development of your scientific thought. First, is there a *fil rouge* in your scientific publications or in your works as a scholar? And, the other way around, we know that scholars usually like to

present their careers in a never-ending coherent development of their thought. Actually, I want to ask you, what is the major change, if any?

I certainly think it is difficult to present my work as a coherent whole. Many scholars pursue different curiosities and try to work out things step by step. With time we might detect a certain degree of coherence, but it is not that it is unfolding so directly, or is deliberate. It is also just different phases of life that one works through. So in that sense, the breaks are perhaps more interesting indeed. For me, the greatest turning point was probably the turn from idealism to greater realism about law. I started off during the roaring 1990s, when everybody thought the world was becoming a beautiful place with harmony and common values, and I was very idealistic and hopeful about the UN, international organizations, international law, and all the fantastic institutional innovations that came about, the WTO, the permanent European Court of Human Rights and the International Criminal Court. Later – maybe just as a reflection or a response to dealing with these questions in greater detail over time and seeing them more in action – I became more skeptical of the general story. I had in my mind initially a broader normative universe, and with time I got more interested in the workings of power, and I tried to trace more the 'dark side' of international law. Not just to debunk international law – I think that is really unnecessary – but to understand what the biases and problems are with international law and what makes it difficult or impossible to pursue progressive politics through the instrument of international law. My work on hegemony, for example, was the first in which I tried to pursue this interest and that lead me into a somewhat more skeptical direction. So, in the 1990s I read Habermas, the late Habermas especially, and then in the 2000s I came more to read Foucault and Bourdieu and it is not simply a shift from one to the other but in a sense an attempt to come to terms with the greater complexity.

Speaking of which, many young scholars start their career today based on very strong ideas. The idea that somehow with their job they can change something in the power structures. But of course, they usually get more and more disappointed. How do you keep motivation alive? How can you convey your message as a scholar, in your job, to see some change in the real world?

It is probably important to have that degree of disillusionment relatively early, to figure out what you can realistically achieve with academic scholarship when you try to change the world. In my view what really academia does best is to change mind-frames, ways of understanding the world. They are not directly related to impact and change, but that might work over time and remotely and you will not be able to trace your part in that as easily. So typically there are changes in sentiment, in broader understandings, in attitudes that go along with scholarship which moves in a certain direction and that is typically a construction site in which many participate. You do not really see what the individual is contributing, everybody is contributing to something, but the direct impact of that individual contribution is not obvious. Plus, the effects of such construction in the political sphere are also not obvious. It is not that we sit down as the philosopher king that we always hoped we would be and write the next treaty on how to combat climate change. Maybe we can develop some ideas and tools that might feed into the conversation, but it is still a relatively

remote impact. If we hope and wait for the moment when the International Court of Justice cites our scholarship, we will always hope in vain, or at least most of us. And that is not typically the kind of direct impact that you have, so I think you have to be realistic about what you can do as an academic. But scholarship is one thing but most of us, by creating and having a better understanding of the way the world works, institutions work, law works, have a lot to offer in political mobilization, civil society action, institutional links. We can become very directly engaged and academic work will help us to do this, but one should not hope that the scholarship itself changes the world. We need much more than that.

Do you think that this is somehow related to the growing divide between research and teaching? Nowadays as young scholars we are increasingly invited to publish more and more and to dedicate our energies to research and to be competitive, instead of teaching. Do you think this is related somehow?

Yes and no, probably. For certain types of scholarship and their impact, there is an advantage to being very specialized: this might help move litigation forward or help in the drafting of treaties, because your expertise can go into that and that is desirable. At the same time, there is a tension between teaching and research. My sense is that there is an imbalance there, one that is growing, and the push to publishing more, publishing quicker at an early stage of course pulls you away from the teaching. That means also that this other kind of role that I described before – shaping opinions, making people see the world differently – which you often do in the classroom gets undervalued and as a result this kind of broader impact might somewhat get lost. The idea of a lecture that was trying to give broader guidance and was one of the things scholars were really devoting much time to has given way to measurable impact through publications. This goes along with greater specialization but also a limitation in the way of stimulating broader thinking and changes and broader ways of seeing the world .

As young scholars, we are more and more used to the idea of making a product to be sold, to be advertised in a way, and of course in our job the role of big publishing houses is getting more and more relevant. Sometimes they even make the market assessment before the scientific assessment. Do you think that this dynamic can be somehow reversed or that there can be some counter-power from the inside of the academy? We know very well the reasons for this dynamic and they lie beyond the academic world. But do you think that from the inside, accomplished scholars and young scholars can cooperate somehow to build some counter-power?

There is obviously something problematic going on there, especially with the turn to making money from academic scholarship. At the same time, a focus on what kind of audience you might reach with the article or book is also helpful. Publishers – and I am reviewing for some of them – want to know how many people will read their product and will buy it, of course. This is obvious, but for academics it is also an important factor to take into account. You do not want to write fantastic scholarship that nobody reads because it is on some niche topic nobody ever thought they would be interested in. You want to reach a bigger audience and so thinking about the audience and the part of publishers is not altogether negative. At the same time,

there is a problem in the main focus on making money which is yet more pronounced in the natural sciences, because the commercial publishers are much more dominant there than they are maybe in law or the social sciences I think there are some ways in order to counter that orientation. The Open Access movement that is underway these days is at least trying to shake some of the foundations of the publishing market and I think that is very helpful. – The idea that what is produced on the basis of taxpayers' money ought to be accessible to everybody, is a very worthy one and it might break some of the business models of the bigger publishers. There are also possibilities of academics getting together and publishing on their own, which in a sense cuts out publishing houses. The early German Law Journal is an example. And US Law Schools have been doing this for a long time – most US legal scholarship is published in law journals financed by the law schools themselves. There are all kinds of problems with that mode of publication, but it means the journals are not dependent on any publishing houses. So that is a pointer in a direction that is very positive and shows that there are possibilities of developing in a way that one might not have thought. One does not need that much funding in order to generate new journals or new publishing houses. The main challenge is to make sure that you get the readership, that you get a critical mass of academics together to recognize and publish in these places. This is the major challenge because of course, the marks of status that you get from publishing with traditional publishers are difficult to match for some new endeavors. But I think it is not impossible.

I would like to pinpoint you on inequality in international legal scholarship. We all know that still today there is a significant inequality in international legal scholarship: gender inequality, racial inequality and so on. My question is not about the solutions or about the reasons. My question is more about the internalization of the awareness of this condition of privilege. As a white European male, I feel privileged many times, but still today I somehow struggle to realize how this thing works, the extent of my privilege. I think that cooperation between accomplished scholars and young scholars to increase this awareness would be beneficial. What can we do about that? That's once again about you being an example.

I myself am an example of that privilege – being white and male and having had the good fortune that I grew up in West Germany and not a few kilometers further East have probably made it possible for me to be where I am now. Now, it is important to retain awareness of that privilege, and you are right, this is something one has to foster, and also generate a constant visibility of the problems of privilege and inequality of access. So that is one thing, one element we know: we need to establish greater access possibilities, be careful in selecting panels, to have gender and age diversity and so on.

But there is also something deeper in there than the direct inclusion of actors, and that has maybe to do with the terms of debate. This is something critical scholars have highlighted quite a bit: the type of attitude and thinking that we try to reproduce when we do academic scholarship might be actually very gendered and racially biased. It is based on the idea of a detached objective observer who comes with a neutral position of looking at the world as if we could adopt that objective position.

But that position by necessity includes and excludes and it downplays other forms of experiencing the world – forms that might be very worthy of inclusion but that are left out. There was a striking example a few years ago at the International Society of Public Law Conference in Copenhagen. Bryan Stevenson gave a talk, a keynote lecture, on activism against death penalty and discrimination against black inmates in the southern US. He has been engaged in such activism as both a scholar and a practitioner, and his style was perceived by many as being that of a preacher and activist rather than that of a scholar. Some people felt this was great and liberating, others thought it was misplaced – that it was an academic society and you should give an academic talk that was sufficiently detached and not imbued with all the particular political projects that he was after in liberating inmates that had been unjustly imprisoned by the American justice system. I thought that this tells us something about what we think of what scholarship is and ought to be and also whom it excludes. Most or many white scholars would probably not have chosen that kind of delivery, that kind of approach. And the same could perhaps be said for many women who might feel uncomfortable with the supposed objectivity, the name dropping and the kinds of things you do when you want to become a successful academic. They might also want to choose other voices in order to express the way they see the world in their scholarship.

I think these terms of debate are something that we need to be attentive to if we want to be inclusive in a deeper way than simply putting more diverse people onto panels. This is not to say that there are not also many other things that can be done, maybe more practically, especially to do with more material possibilities: resources, access to education and the like, many of which we cannot provide at the receiving end of the academic system. But we can be very aware of such issues, for example early on in university admissions. There are many fronts in which we can try and make a change.

One last question about your personal experience as a scholar. Nowadays we, as young scholars, experience more and more a sense of vulnerability, anxiety, depression. By now there are reliable studies about the impact of mental illness in our job. Sometimes the response we get is a self-help approach, so to say. It is a way to put the blame on the individual. In this regard, do you think there is something we can do? Have you ever felt a sense of vulnerability in the development of your career? Have you ever experienced this sense of precariousness and pressure?

This is a really important question. I have been lucky because I have had the good fortune to work during my PhD here at the Institute [MPIL] with a scholarship, and then to have two post-doc scholarships, and just after my post-doc to get a teaching position in the UK which left me relatively secure. So, I have not experienced this vulnerability myself as much, but I have seen quite a few people struggle with those problems, doctoral students as well as postdocs and junior colleagues. This, of course, relates to the competitive pressures that are increasing everywhere. It is the nature of capitalism to make us compete at all levels and such competition has terrible effects on mental health throughout the western world. It is pretty clear that we need to do something about this. In academia this is particularly so because

the precarious situation lasts so long, and not only in the German system where having a permanent position can take you into your forties, but increasingly so also elsewhere.

In the Anglo-American world you used to have earlier access to faculty positions, but this has now been largely replaced by postdocs who need to publish a lot before they finally get into some tenure track position. That model incentivizes everyone to produce more, to be seen, to be productive before you are thirty, but it also leads to a situation where you are entirely unstable and you have so many uncertainties in your life that it is very difficult to cope. The constant pressure to come out on top, to publish in top journals has grown. That is logical because there are lots of people in the market and you need to excel in the midst of all of them. This, in turn, is also a result of the globalization of the market – we used to have much more protected academic markets, nationally protected ones. This has been broken up in many places in favor of a more open system, where people can work in countries different to the ones in which they started off. You are an example, I am an example. This opening is in many ways a good thing, but it also means that the competitive pressure for each job has grown enormously because so many more people compete for every job than it was the case before. And that means that there is a possibility for the academic market to let people fight it out for much longer until they eventually see who is the fittest and who might make it and be taken into a permanent post.

This is a vicious cycle and it is not something that we should continue. I think one of the main ways of responding to it is to give greater job stability far earlier and probably best right after the PhD. Then you would have an early selection: some stay in, some stay out, of course, that is the nature of the academy, but it should be clearer much earlier and not at such a late stage. That would help with a lot, but it will not help with everything. And obviously, there are many ways in which we can and we need to try to provide recognition for things that are not just excellence in publishing. The element of teaching that you mentioned before, the increasing devaluation of teaching efforts people make, also has the effect that there is the focus on just one product: the top article or the top book being produced. And that leads to greater pressure on that product and people despair of the need to come up with their best shot at one product.

Nico Krisch is a Professor for International Law at the Graduate Institute Geneva and Co-Director of the Global Governance Centre. He has recently been awarded the Max-Planck-Cambridge Prize of International Law.

Angelo Golia is a Senior Research Fellow at the Max-Planck-Institute for Comparative Public Law and International Law.

Cite as: Angelo Golia, “Awarding inspiration – A conversation with Nico Krisch on the occasion of the awarding ceremony of the Max-Planck-Cambridge Prize of International Law”, *Völkerrechtsblog*, 22 January 2020.
